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July 14, 2006

MASS. DEPT. OF
TELECOMMUNICATIONS
AND ENERGY

2006 JUL 14 P 4: 35

RECEIVED

VIA HAND AND ELECTRONIC MAIL

Ms. Andrea Nixon
Clerk, Cable Division
Department of Telecommunications and Energy
One South Station
Boston, Massachusetts 02110

Re: Docket No. 06-1; Petition by Verizon New England Inc. to commence a rulemaking pursuant to 207 C.M.R.2.01(1) to amend 207 C.M.R. §3.00 *et seq.*: Licensing.

Dear Ms. Nixon:

Pursuant to the May 5, 2006, Order Instituting Rulemaking in the above-referenced proceeding, AT&T Communications of New England, Inc., submits the enclosed initial comments regarding the proposed revisions to 207 C.M.R. §3.00, *et seq.*

Kindly acknowledge receipt of the foregoing, by stamping the enclosed copy of this cover letter and returning it in the enclosed self-addressed and stamped envelope.

If you have any questions regarding this matter, please do not hesitate to contact me. Thank you.

Very truly yours,

Jay E. Gruber

Enclosure

cc: Bruce P. Beausejour, Esq.
Robert N. Werlin, Esq.

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Petition by Verizon New England Inc. to commence a
rulemaking pursuant to 207 C.M.R.
§2.01(1) to amend 207 C.M.R. §3.00 *et seq.*: Licensing.

D.T.E. 06-1

**INITIAL COMMENTS OF
AT&T COMMUNICATIONS OF NEW ENGLAND, INC.,
IN SUPPORT OF PETITION**

On March 16, 2006, Verizon New England Inc. (“Verizon”) filed a petition with the Cable Division of the Department of Telecommunications and Energy (“Department”) seeking adoption of a regulation that would govern the process by which a municipality that has previously issued at least one cable license would review an application for a cable licenses submitted by a firm that would compete with the incumbent cable service provider. In essence, the changes would streamline and expedite the process by which municipalities review and act upon such applications. Verizon also requested an amendment to 207 C.M.R. §3.09, the regulation that governs appeals from decisions regarding applications for cable licenses. Under Verizon’s proposal, such appeals would be conducted *de novo* and a hearing would be required within 60 days of the filing of a petition of appeal.

By Order Instituting Rulemaking (“Order”), dated May 5, 2006, interested parties have been invited to submit initial and reply comments on Verizon’s proposal. AT&T Communications of New England, Inc., (“AT&T”) urges the Cable Division and the Department to adopt the regulatory changes sought by Verizon and any additional changes in the regulatory framework in order to make competitive entry into the cable services market as easy as competitive entry into the telephone services market.

The regulatory structure for granting licenses to cable service providers was developed in an era in which it was reasonable to assume that only one firm would be able to economically deploy and maintain the physical facilities necessary to provide cable service. Thus, it was reasonable at that time to assume that the firm which won a license to serve a community would, as a practical matter, have a *de facto* monopoly, even though, at least theoretically, other firms might seek to compete with it.

Since firms with monopoly power tend to be less efficient than firms which are subject to competition, numerous regulations are often imposed upon firms that are not subject to competition to induce good service quality and restrain rates. The cumbersome and lengthy review process currently associated with applying for a license to provide cable services in the Commonwealth reflects the view of another era, namely, that the public interest would be best served by withholding authority to serve customers until the completion of an exhaustive process of ensuring that a prospective cable service provider holding an effectively exclusive license would comply with various safeguards.

As the Department is well aware from its experience in the telephone services market, where firms are subject to effective competition they tend to innovate, lower prices, and maintain service quality out of a very real concern that dissatisfied customers will switch to another service provider. Competitive firms require fewer governmental controls because market forces will achieve the same objectives that the governmental controls were designed to accomplish – and those objectives will be realized far more rapidly and efficiently than they ever could be under governmental controls.

Dramatic changes in the technology of providing landline cable television programming now make it commercially feasible for firms to consider deploying landline facilities to compete with incumbent cable service providers. In such circumstances, the

thicket of regulations designed to protect the public against a firm with a *de facto* monopoly now serve as a significant barrier that delays, if not denies, the benefits that the public would realize from effective, head-to-head competition by landline cable service providers.¹

Ideally, there should be a comprehensive update to the regulatory framework to facilitate the prompt and widespread development of competition between and among landline cable service providers. However, as the Order notes, while several other states have adopted or considered competitive licensing measures, and Congress is currently considering such legislation, there is currently no pending legislation on the subject in Massachusetts. That is in contrast to laws enacted in Texas, Indiana, Kansas, and South Carolina which allow competitive cable service providers to file a single application with a state agency authority in order to obtain the right to serve as much as the entire state. From that perspective, Verizon's proposals, which would only make limited changes within the regulatory structure that exists under current statutory law, are quite modest.

The Cable Division and the Department should also evaluate Verizon's petition from the perspective of current conditions in the marketplace. Cable television companies today can easily and promptly receive authority to provide telephone services and in many markets are now offering customers the convenience of bundled cable,

A March 30, 2006, Reuters article entitled "Phone companies lag on TV competition: Comcast COO," quoted Comcast's chief operating officer, Stephen Burke, as telling securities analysts at a New York media conference, "I don't think we have any competition... in any material way from either Verizon or AT&T, certainly not in '06, probably not in '07." Continuing, Burke was quoted as saying, "There are a variety of structural reasons that lead me to believe that we will have 8 to 10 million phone customers before the Bells (phone companies) have a million video customers in our footprint." The article further noted the response of Verizon spokesman Mark Marchand, "On one hand, they're saying there's no significant competition, but why are they fighting us tooth and nail in every single place for video franchises in these communities."

Internet, and telephone services.² Unfortunately for consumers, the incumbent cable company often is the *only* firm offering such bundles. Firms offering telephone and Internet services still must engage in the lengthy process of negotiating individual municipal franchises in order to obtain authority to offer customers in those municipalities competing “triple-play” bundles of services.³

Increasingly, states are recognizing that the asymmetry between the ease and speed with which a cable company can obtain authority to provide telephone service in broad areas of a state and the difficulty that a telephone company has in obtaining authority to provide cable programming services in individual municipalities is not in the public interest. From this perspective as well, Verizon’s proposals are modest, almost to a fault.

For these reasons, the Department should adopt Verizon’s proposals, as well as any other proposals that would make it easier for citizens of the Commonwealth to realize

² For example, last week the *Boston Globe* reported that Comcast is adding more than 400 jobs in New England “to keep up with demand for its ‘triple-play’ package of cable, Internet, and phone services launched last year.” (“Comcast To Add 400 Jobs In Region,” *Boston Globe*, July 6, 2006, p. D1)

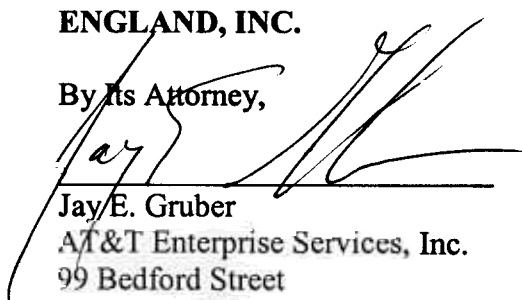
³ Deployment of landline facilities capable of delivering competitive video services represents a considerable financial undertaking, which entails substantial market risk under the best of circumstances. While the Department and Division can do little about market risk, they can work to prevent the risk created by regulatory uncertainty. To the extent that competitive video providers can receive prompt approvals, regulatory risk is significantly reduced, and market risk may even be reduced by more rapid deployment of facilities. The delays inherent in the current process are detrimental not only to competitive video providers, but also to Massachusetts consumers. Last week’s article in the *Boston Globe* noted that Verizon intends to compete with Comcast using its fiber-optic technology (“FiOS”) to deliver high-speed Internet and video services, but that so far Verizon only “has access to 10 communities so far with its FiOS service.” (“Comcast To Add 400 Jobs In Region,” *Boston Globe*, July 6, 2006, p. D1)

competitive choice in the provision of landline cable services and bundles of cable,
Internet, and telephone services.

Respectfully submitted,

**AT&T COMMUNICATIONS OF NEW
ENGLAND, INC.**

By its Attorney,



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